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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 585

MRS. OSCAR C. DOTY, et al, *Appellants*,
vs.
J. S. LOVE, Superintendent of Banks of the State of Mississippi, *Appellee*.

Appeal from the Supreme Court of the State of Mississippi.

APPELLEE'S BRIEF ON MOTION TO DISMISS APPEAL

C. L. HESTER,
C. R. BOLTON,
H. H. CREEKMORE,
Attorneys for Appellee.

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The motion to dismiss the appeal in this case is based on failure on the part of the appellants to observe Rule 10 of this Court, and also failure to comply with the requirements of Rule 27 of the Court.

Rule 10 of the Court, paragraph 1, provides that the justice allowing the appeal shall sign a citation to the appellee, and make same returnable not exceeding forty days from the date of signing the citation. The record in this case shows (typewritten record 234) that the citation was signed November 5, 1934, and the filing date on the record itself shows that it was filed on December 19, 1934, which is more than forty days from the date the citation was signed. Rule 11 of the Court imposes upon the appellants the duty to docket the case and file the record with the Clerk, by or before, the return day. This rule also provides that if the appellants fail to comply with it the appellee may have the cause docketed, and the appeal dismissed, upon producing a certificate to the effect that the appeal has been duly allowed. Since the appellants in this case have filed the record with the Clerk, but after the return date, it is not thought necessary that any certificate as to the allowance of the appeal is necessary for the record so filed by the appellants shows the allowance of the appeal and the time thereof.

This case is to be called for hearing on Thursday, March 7th, and counsel for appellants have not yet filed any brief, and are thereby in default under the pro-

visions of Rule 27 of this Court. The first paragraph of this rule requires that counsel for appellants shall file with the Clerk at least three weeks before the case is called for hearing copies of a printed brief. On the day this brief is written only twelve days remain until the case will be called for hearing, and the appellee will be compelled to undertake to write a brief on the merits in the case without knowing what points and authorities the appellants will set forth in their brief. Since the appellants are in default under this rule, the appellee invokes paragraph 5 thereof which provides that when the appellant is in default under the rule, the Court may dismiss the case.

WHEREFORE, we respectfully submit that for the defaults of appellants the motion to dismiss the appeal should be allowed.

Respectfully submitted,

C. L. HESTER,
C. R. BOLTON,
H. H. CREEKMORE.
Attorneys for Appellee.

CERTIFICATE

I, H. H. Creekmore, one of the attorneys for appellee, hereby certify that I have this day delivered in person a true copy of the above and foregoing brief on motion to dismiss, to E. C. Sharp, one of the attorneys for the appellants.

This February 25, 1935.

H. H. CREEKMORE.